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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7134 OF 2018

Mrs. Ritu Rajkumar Magdum

...Petitioner

vs

The State of Maharashtra & Ors.

...Respondents

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Mr. N.V. Bandiwadekar, i/b. Mr. Sagar A. Mane, for the Petitioner.

Mr. J.A. Madane, AGP for the State.

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CORAM : S.C. GUPTE, J.

DATED: JULY 26, 2018

P.C. :

. Heard learned Counsel for the parties. Rule. Rule taken up for hearing by consent of Counsel.

2. This petition challenges an order passed by Respondent No.2- Education Officer (Secondary) Zilla Parishad, Ratnagiri. By the impugned order, the Petitioner, who had been rendered surplus in Respondent No.5- School, was directed to be absorbed in Kai. S.N. Desai (Topiwala) Vidya Mandir, Nanar, Taluka-Rajapur, District-Ratnagiri. The challenge is on several grounds. It is submitted that the Petitioner was ready and offered to join the school at Nanar, but was not allowed to do so by the management of that school. That was presumably on the footing that the vacancy of English Teacher (the Petitioner being an English teacher) had been filled up and there was no post to

accommodate the Petitioner. It was submitted that in about two months' time there is likely to be a vacancy in Respondent No.5 school itself due to retirement of another English teacher, one Basade, on 21 August 2018 and, in that event, the Petitioner would be entitled to claim repatriation to his very school. It is submitted that in the interregnum, for a short period of about two months, the Petitioner may be accommodated in a nearby school, namely, Hutatma A.L. Kanhere Vidyalaya, Ayani, Taluka-Khed, District-Ratnagiri.

3. On these facts, when the matter appeared before this Court on the last occasion, this Court asked the Education Officer to file a suitable reply dealing with the contentions of the Petitioner and, in particular, as to whether there is any surplus teacher for the subject of English either in open category or in ST category for being appointed. The Education Officer has filed an affidavit dated 19 July 2018, where, in the first place, the Petitioner's case that he sought to join duties at the Nanar school, but that he was not allowed to do so by the headmaster of the school, has been accepted by the Education Officer. The Education Officer has in fact gone to the length of saying that the headmaster of Nanar school had deliberately and intentionally not allowed the Petitioner to join the school, despite the Education Officer's requisition. The Education Officer has also submitted that though several communications were addressed by the Education Office to the headmaster of Nanar school, "always all the orders are violated by the headmaster of the said school". Surprisingly, there is no action taken by the Education Department against the headmaster in the premises.

4. Be that as it may, it is apparent from the record of the case, which is not in dispute, that Hutatma A.L. Kanhere Vidyalaya, Ayani, Taluka-Khed, District-Ratnagiri, also has, according to the roster, three posts in open category and one from ST category to be filled-in. The post currently vacant in that school is of an English teacher. Admittedly, there is no teacher for the subject of English available in the district. That is in accordance with the Education Officer's own affidavit. Absorption of the Petitioner in this school is, however, not accepted by the Education Officer purportedly, on the ground that there is also a backlog of one Scheduled Tribe (ST) teacher. It is apparent if one has regard to the roster of Hutatma A.L. Kanhere Vidyalaya, Ayani, Taluka-Khed, District-Ratnagiri, that if one candidate is accommodated in the school in the vacancy, all posts of teachers in the school would have been filled-in from reserve categories. That obviously is not in keeping with the framework of the law of reservation. This is apart from the fact that there is, in fact, admittedly, no surplus ST teacher available for being accommodated in the school for the subject of English. The school has admittedly been requiring the Education Office to send either a surplus teacher or allow it to appoint a new teacher for the subject of English. The first requisition is as of 22 April 2017 dealing with the requirement for the academic year 2017-18. There is also a requisition as recently as on 26 June 2018 requiring an English teacher and calling upon the Education Office to send a surplus teacher in case such teacher is available.

5. Besides, admittedly a post of English teacher is about to lie vacant in a couple of months' time and the Petitioner can always be

repatriated to his original school-Respondent No.5.

6. In the premises, interests of justice do mandate that the Petitioner be accommodated as an English teacher in Hutatma A.L. Kanhere Vidyalaya. It will be open for the Petitioner to apply for repatriation as and when a vacancy arises in his original school, i.e. Respondent No.5.

7. In the premises, Rule is made absolute by quashing and setting aside the impugned order of the Education Officer dated 15 June 2018, and directing Respondent Nos. 1 and 2 to send the name of the Petitioner to Hutatma A.L. Kanhere Vidyalaya for being accommodated in the vacant post of an English teacher. This order must be complied with within a period of two weeks. All parties to act on an authenticated copy of this order.

**Smita
Johnson
Gonsalves**

Digitally signed
by Smita Johnson
Gonsalves
Date: 2018.07.30
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(S.C. GUPTE, J.)